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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 116.

IN THE MATTER OF THE APPLICATION OF
PAUL L. GAULT AND MARJORIA GAULT,
FATHER AND MOTHER OF
GERALD FRANCIS GAULT, A MINOR,
Appellants.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF ARIZONA.

BRIEF OF THE OHIO ASSOCIATION OF JUVENILE COURT JUDGES AS AMICUS CURIAE.

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BRIEF OF THE OHIO ASSOCIATION OF JUVENILE COURT JUDGES AS AMICUS CURIAE.

INTEREST OF AMICUS CURIAE.

The Ohio Association of Juvenile Court Judges, an unincorporated association whose membership includes all but a few of the judges exercising juvenile court jurisdiction in the courts of the State of Ohio, and many former judges of juvenile courts, offers this brief as *amicus curiae*. Written consent to the appearance of the Association as *amicus curiae* has been obtained from the attorneys for both parties and is on file with the Clerk.

STATEMENT OF THE CASE.

Because there was no transcript of either of the two original hearings in the Juvenile Court of Gila County, there appears to be some dispute about the actual facts of the case.

Probably the facts as stated at the outset of the opinion of the Supreme Court of Arizona represent a

fair compromise between the different versions of the parties hereto. *Application of Gault*, 99 Ariz. 181, 407 P. 2d 760 (1965). It would seem a work of supererogation to repeat them, or try to frame still another version of them, as a basis for argument of this case.

Two things do stand out, however, whatever version of the facts is accepted.

The first is that the appellants were not strangers to the juvenile court, who came into it innocent, naive, and inexperienced, with no premonitions of what might be ahead. They had been there before, and had reason to believe that there might be serious consequences if they were brought in again. Mrs. Gault's original affidavit states that she thought she needed an attorney, but rather than consulting one, she discussed the matter with the Chief of Police. This is an example of one of the professional advantages the physicians have over the attorneys. If a cancer victim consults the corner druggist instead of a doctor for advice, they just bury him.

The second is that the child, Gerald, was a full and willing participant in a peculiarly unpleasant type of misconduct, and admittedly had indulged in similar activities before. (R. 57, 58.) This activity was and is the objective of a national advertising campaign directed toward limiting its occurrence.[1] A recent article appearing in a national magazine and entitled "Terror by Telephone" begins with the statement "46,000 complaints in one month—and hundreds of thousands more calls go unreported."[2] The only factual dispute in the record is the utterly inconsequential one as to whether or not Gerald uttered some of the

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[1] See, *e.g.*, AT&T advertisement, 52 A.B.A.J. 790 (1966).

[2] Fleming, *Terror by Telephone*, This Week Magazine, August 28, 1966, p. 4.

obscenities used. This factual dispute is the basis of the legal dispute over the failure to call as a witness the unhappy victim of the obscene telephone calls. Admittedly, Gerald placed the call, and thus, both practically and under the most rigid requirements of the criminal law, was *particeps criminis*, and fully chargeable with all that was said, regardless of who said it. Gerald's admissions were tantamount to a guilty plea in the criminal court and hence there was no need for witnesses or sworn testimony.

From the standpoint of the juvenile court law and philosophy, this second matter is relatively unimportant. The concern of the juvenile court is not so much with what a child did as with why he did it, and how he can be helped to avoid getting into further or more serious difficulties. This does not mean that there need be no showing of the jurisdictional facts, either of violation of law, or other misconduct. If a child has done nothing wrong, or is not shown to be in a condition of neglect or dependency, no proper juvenile court would think of taking jurisdiction. Quite apart from the necessity of protecting the public from activities that are the subject of so much concern, Gerald's actions here might well be taken as presaging much worse trouble to follow, if the reasons for them could not be detected and corrected.

SUMMARY OF ARGUMENT.

1. The basic right of a juvenile is not to liberty but to custody. This fact has been recognized in our law for over a century, and the arguments of appellants here only raise again issues long decided. The fundamental difficulty with these arguments is their failure to recognize that children are not adults. Their problems, either at home or in the courts, must be met with flexibility and freedom

to act in the child's best interests. Confining the juvenile court within the rigid limits of the criminal law, and criminal punishments, would be a backward step, supported neither by precedent nor common sense, and would create more difficulties than it would solve.

2. The broad discretion of the juvenile court, which does not require a relationship between the specific act of delinquency and the disposition of the delinquent child, is not an unconstitutional deprivation of due process. Although broad, the discretion of the court is not unlimited, nor may it be exercised arbitrarily. Both statutes and innumerable cases delineate its limits with legal precision. The doctrine of separation of powers places in the legislature, not the courts, the determination of whether and to what extent actions and dispositions should be connected. So long as the trial court acts within the legislative limits, appellate courts may not interfere. Recent case law shows the horrible practical results of legislative action relating disposition in juvenile cases to the specific wrongful action of the child.

3. The most that can be said about this case is that the trial court committed procedural errors in commitment of appellants' son. While it is easy to second-guess the juvenile court, the record reveals considerable reason to find that the child was not responding to probation, and that both his best interests and the protection of the public required some other approach to his problems. Probation is a matter of grace, and there is no constitutional right to notice and hearing before revocation. Thus the appellants' contentions with respect to due process are not really presented by the record in this case. The fact that a trial court is guilty of errors in law or practice is not sufficient to vitiate the law, and the juvenile court laws should not be vitiated in this action.

ARGUMENT.

One can agree with appellants' proposition that the questions are substantial in this case (Juris. Statmt., 10), and can note also their contention that the legal premise of the earlier juvenile court decisions is being criticized, without accepting the assertion that such criticism is increasing, or the implication that such criticism is irrefutable.

Appellants cite a number of articles and one reported decision. These can easily be matched by contrary views, most of them expressed by persons with long practical experience.[3]

The Supreme Court of Arizona, in its opinion rendering the judgment under attack, adequately meets the

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[3] Alexander, *The Fable of the Fantastic Delinquents*, Federal Probation, March, 1960, p. 13;

Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206 (1960);

Eastman, *The Juvenile Court Judge's Job*, 5 National Probation & Parole Ass'n J. 414 (1959);

Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 Crime & Delinquency 97 (1961);

Larsen, *New Approaches in the Juvenile Court Setting*, 10 Crime & Delinquency 157 (1964);

Nicholas, *History and Philosophy of Juvenile Courts*, Juvenile Court Judges J., June, 1961, p. 25;

Noyes, *The Juvenile Court in Our Judicial System*, Juvenile Court Judges J., December, 1960, p. 6;

Satterfield, *Justice for Youth Through Law—Some Observations on the Juvenile Court*, Juvenile Court Judges J., October, 1962, p. 13;

Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719 (1962);

Sheridan & Mancini, *On Becoming a Juvenile Court Judge*, U. S. Govt. Printing Office (1961);

Young, *The Constitution and the Juvenile Court—Letter or Spirit?* J. Am. Jud. Soc'y, October, 1960, p. 93;

Young, *The How and Why of the Juvenile Court*, P. T. A. Magazine, December, 1962, p. 7.

A substantially complete list of the cases upholding the constitutionality of the juvenile court laws of the various states appears in *Pee v. United States*, 274 F. 2d 556 (D. C. Cir. 1959).

questions presented for review by appellants. There is little reason for one appearing as *amicus curiae* merely to repeat arguments or multiply authorities. We would prefer, therefore, to address our arguments to more fundamental considerations.

I. The Juvenile Court Must Recognize the Differences Between Children and Adults.

> "Juveniles have particular and peculiar rights and they require particular and peculiar treatment. *The basic right of a juvenile is not to liberty but to custody.* He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so." (Emphasis added.)[4]

The controversies that arise in this case, and the questions presented, are not new, although appellants seem to think they are. Long before the first juvenile court laws were enacted, these same issues were raised, argued, and disposed of. The earliest case specifically dealing with the constitutional rights of what we now call a juvenile delinquent is *Ex Parte Crouse*, 4 Whart. 9, 11, decided by the Supreme Court of Pennsylvania in 1839. The Court there says:

> "As to the abridgment of indefeasible rights by confinement of the person, it is no more than what is borne, to a greater or less extent, in every school; and we know of no natural right to exemption from restraints which conduce to an infant's welfare."

There were many similar decisions before ever the juvenile courts as such came into existence.

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[4] Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719, 720 (1962).

> "We perceive hardly any more restraint of liberty than is found in a well regulated school. Such a degree of restraint is essential in the proper education of a child, and it is in no sense an infringement of the inherent and inalienable right to personal liberty so much dwelt upon in the argument." *In re Ferrier,* 103 Ill. 367, 371, 42 Am. Rep. 10, 12 (1882).[5]

Even though the case law just discussed was and is a sound disposition of the problem, the fact was recognized before the end of the Nineteenth Century that the problem might not remain settled.

> "The question of the extent to which the state may assume the guardianship of children who have committed no offense is one which has never proved a very difficult one practically because of the limited efforts of the Legislature in that direction; but the question goes to the very depths of the subject of civil government, and may grow more difficult as the necessity of saving the young from evil lives becomes more pressing or apparent." [6]

Our Juvenile Court judges recognize, better than anyone else, that the "necessity of saving the young from evil lives" now is both pressing and apparent, as witness the recent plaint of one of them.

> "These children are with us here and now; furthermore, they continue to arrive in ever-increasing numbers. No governor can veto them; no legislature can repeal them; and no court can nullify them.
>
> "And so it seems that we face the rather simple

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[5] See also *Milwaukee Industrial School v. Supervisors of Milwaukee County,* 40 Wis. 328, 22 Am. Rep. 702 (1876).

[6] Rich, *State Guardianship of Children,* 15 L. R. A. 593 (1891).

decision as to whether we mobilize all our brains and resources to save them—or just dump them." [7]

Does the fact that these problems are now more pressing than they have been justify a disregard of precedents going far back in time? Those who are ignorant of legal precedents, or choose to ignore them, usually can find excuse or reason for doing so. The present popularity of resorting to the constitutional safeguards of the liberties of the person presents an easy and plausible reason for ignoring the fact that children could not possibly grow to productive and law-abiding adulthood if they were entitled to those liberties which are the perquisites of physical, mental and emotional maturity.

> "It is the unquestioned right and imperative duty of every enlightened government, in its character of *parens patriae*, to protect and provide for the comfort and well-being of such of its citizens as, by reason of infancy * * * are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of governmental functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise. *County of McLean v. Humphreys*, 104 Ill. 378, 383 (1882).
>
> "It has been for many centuries theoretically true that the State * * * is the guardian of children within its borders. The constitution of a State is always presumed to be framed by organized society governed by settled principles * * *.
>
> "It is, therefore, proper to assume that our constitution, and our laws enacted under it, sanction and confirm the great principle of the sovereign's guardianship of the children within the dominions of [illegible]

[7] Statement of Judge William S. Long, in NCCD News, May-June 1962, p. 2.

sovereign." *Van Walters v. Board of Children's Guardians*, 132 Ind. 567, 569, 32 N. E. 568, 569, 18 L. R. A. 431, 432 (1892).

"Statutes like this have been in existence for the past two hundred years, and it is very late to call their constitutionality into question." *Reynolds v. Howe*, 51 Conn. 472, 478 (1884).

It is no answer to the legal problems which arise from the biological necessity for children to be under restraints which can only be released gradually with increasing maturity to say that under the administration of the juvenile court laws, occasional cases arise wherein children receive the "worst of both worlds." *Kent v. United States*, 383 U. S. 541, 556 (1966).

When we say that children receive the "worst of both worlds" are we saying that since *parens patriae* cannot, because of lack of facilities, give the child the care he requires that he should be tried by criminal procedures and thereby be given the same chance as an adult criminal to escape the consequences of his act by reason of the constitutional protections that may prevent successful prosecution? If we are, then we are *also* saying that the child should be prosecuted to the full extent of the law and receive adult punitive measures if found guilty. Would it not be wiser to require the state to provide proper facilities for care and treatment of the child than to require the state to give the child criminal due process which also must entail criminal punishment of the child? If criminal due process is an advantage to the child, and we contend it isn't, then for him to get this advantage, as above, is but "to burn the barn to roast the pig."

It is possible to find learned justices of Supreme Courts complaining that today children get the best of both worlds.

> "A peaceful citizen has the right to be protected by his government, and to have a spade called a spade, and if young hoodlums are mentally incapable of a criminal intent they should be put to the burden of establishing that proposition in a court of law under established rules and are only entitled as a matter of right to the constitutional guarantees afforded to other citizens." *State v. Monahan,* 15 N. J. 34, 104 A. 2d 21, 40, 48 A. L. R. 2d 641, 662 (Oliphant, J., dissenting) (1954).

The fundamental difficulty with the idea that children brought before the juvenile court, should be accorded the constitutional rights designed to protect adults accused of crime, is that it ignores what every wise parent, and every real professional in the biological and behavioral sciences knows: children are not adults, and do not become adults all at once.

> "Immaturity is the natural condition of childhood. Unfortunately, many modern parents have come to look upon this condition as bad. They cannot bear to see a child as a child. There is a growing social force which dictates that he must be turned into an adult right away * * *."[8]

The typical adolescent in a normal and loving home is a creature of conflicts and contrasts, so grown up and independent one minute, so childish and helpless the next. The understanding person can hear the cry for help in the scream of defiance, can ease the restraints or tighten them to adjust to the fluctuations of the changing pattern of growth. The Juvenile Court, acting under the doctrine of *parens patriae* as the wise parent, must have that which is embodied in the present law, flexibility and freedom to act in the best interests of the child. To undertake to

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[8] Kennick, *Where Have We Gone Wrong?* The Blade (Toledo, Ohio), September 11, 1966, p. 1, at p. 15.

confine this flexibility within the rigid limits of the criminal law and the constitutional provisions applicable to the criminal law, would create far more problems than it would solve.

> "Another aspect of current thinking is a movement toward absolutism the world over * * * the movement * * * may easily be carried so far with mistaken zeal that * * * the juvenile courts in reaction may be pushed back into or may fall back into ordinary criminal courts of the old type * * *."[9]

For these reasons the juvenile court codes of the several states specifically provide that proceedings thereunder are civil, not criminal, in nature. In the case at bar, Gerald Francis Gault was not charged with being a felon or even a misdemeanant, but rather with being a delinquent. Section 8-228, Ariz. Rev. Stat. Ann., provides that:

> "A. An adjudication by the juvenile court upon the status of a child shall not operate to impose any civil disability, nor shall a child be deemed a criminal by reason thereof. Any adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged with or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution.
>
> "B. The disposition of a child or of evidence given in the juvenile court shall not be admissible as evidence against the child in any proceeding in another court, nor shall such disposition or evidence disqualify a child in a civil service application, examination or appointment."

The Arizona Industrial School, to which this lad was committed (not sentenced), is not a "penal" institution, but rather a "school"—a place of learning—which the

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[9] Pound, *The Juvenile Court and the Law*, in 10 Crime & Delinquency 490, 503 (1964).

state, as *parens patriae,* furnishes for youth found to be in need of the specialized care and treatment available there, in the same manner as any wise parent would provide hospitalization for a sick child.

Since we are dealing here with a civil, as distinguished from a criminal situation, constitutional guarantees designed to protect adults accused of crime are not necessarily appropriate.

As we have pointed out, the problem is a recurring one. It is illustrated by the cases of a century ago previously referred to. More recently, it came up fifty or sixty years ago when juvenile court statutes were being adopted and tested. Now we see it again, raised by the pressures of urbanization on the vastly increased numbers of children in our society, and confused and mixed up with the recent upsurge of interest in civil liberty.

Our contention is that these pressures and interests should not be allowed to confuse the issues involved, and that the same legal questions that have been presented in the past should be decided as both precedent and common sense dictate, and in this case, as they were so decided in the court below.

II. The Powers of the Juvenile Court as to Disposition Are Not Restricted Except by the Requirements of the Child's Welfare, and Should Not Be Otherwise Restricted.

At various points, the appellants argue, but rather by innuendo than with honest force, that the juvenile court statutes are an unconstitutional deprivation of due process because of the broad discretion of the court in disposition.[10]

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[10] "* * * it authorizes a juvenile to be taken from the custody of his parents and to be committed to a state institution

(Continued on following page)

Appellants cite *Kent v. United States*, 383 U. S. 541 (1966) in support of their contention that the juvenile courts without procedural safeguards and with excessive broad discretion lodged in the judge "affect thousands of individuals yearly in a way which can adversely determine their future lives." *Kent* did not so hold. On the contrary *Kent* held that waiver of this juvenile court jurisdiction which appellants so roundly condemn is a " 'critically important' action determining vitally important rights of the juvenile" and that "this jurisdiction confers special rights and immunities," *id. at* 556, and that it was a denial of due process to divest him of this right without hearing.

In spite of the reiteration of appellants' contention that there must be standards or limitations upon the juvenile court's discretion, other than those implied from the word "discretion" itself, or the statutory language concerning the child's welfare, and the implication that such standards would be met if there were a relationship between the act of delinquency and the disposition permitted, the appellants cite no authorities whatsoever in support of their position, nor do they offer any argument other than the repetition. Perhaps in this they feel entitled to prevail on the basis of the Bellman's statement, "What I tell you three times is true."

(Continued from preceding page)

by a judicial proceeding which confers unlimited discretion upon the Juvenile Court." (Juris. Statemt., 3.)

"The Arizona Juvenile Code (A. R. S, §§ 8-201-8-239) violates the Due Process Clause of the Fourteenth Amendment because, taken as a whole, it confers unlimited discretion on the juvenile judge without providing standards to prevent its arbitrary abuse." *Id.* at 12.

"It gives the judge authority to make any order for the commitment, custody or care of the child 'as the child's welfare and interest of the state may require.' (§ 8-231) No standards limit this wide discretion of the judge * * *. He is not required to establish a relationship between the specific act of juvenile delinquency and the period of commitment * * *" *Id.* at 13.

It is our contention, however, that this matter is a most serious one, and underlies and supports the specific objections which appellants argue more in detail. By its speciousness, it forms an uncertain foundation for the edifice erected upon it. If it crumbles, the whole structure should fall with it.

Appellants cite no authorities in support of their position because there are none to cite. They make no argument, for there is none in reason which will support their naked assertions.

If the words "the child's welfare" do not provide a standard which controls the discretion of the court, then a large part of our case law is meaningless. In the course of each year, there are somewhere between two hundred and four hundred reported cases in which disposition is governed by reference to the welfare of the child. The usual expression, which is repeated in the case law with monotonous regularity, is that the child's welfare is the pole star which must guide the court's determination of the issues.

To say that a standard so long accepted and so often referred to is not within the measure of "due process" is so patently absurd as to require no further consideration.

By their implication that the standards of "due process" would be met if the juvenile court statutes established some relationship between the acts of the child and the dispositions available to the court, appellants lay themselves open to two arguments, one based on considerations of legal theory, and the other upon practical experience.

The theoretical consideration needs little remark. What actions shall constitute offenses, and what the limits of punishment shall be, have always, under our system

of separation of powers, been matters exclusively within the power of the legislative branch. The court cannot declare that to be an offense which the statutes do not make such. Nor can the court impose penalties other than those ordained by the legislature for the particular offense.

If, therefore, the legislature does not choose to make the dispositions limited in scope or number, it is acting within its constitutional authority, and so long as the court does not transgress the legislative limits, the offender has no complaint, and no appellate court may review the trial court's actions. *In re Lewis*, 11 N. J. 217, 94 Atl. 2d 328, 332 (1953).

In the case at bar the Arizona legislature did impose definite limitations on the trial judge's discretion.[11] These limitations on the trial judge's discretion would apply, regardless of the nature of the delinquency with which the child was charged, whether it was for spitting on the sidewalk, or for having committed a premeditated homicide with malice aforethought. The criterion for determining disposition under such statutes is not what the child did, but rather what his best interests require.

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[11] Section 8-236.B, Ariz. Rev. Stats. Ann., provides that:

"A commitment of a child shall not extend beyond the minority of the child, and commitments to the state industrial school or an institution for girl juvenile offenders shall be for the term of the child's minority, unless sooner discharged by the board of directors of state institutions for juveniles."

Section 8-313 provides in part:

"When it appears to the board of directors of state institutions for juveniles that there is reasonable probability that a child committed to the state industrial school, or to an institution for girl juvenile offenders will, if at liberty, observe the law, and that the child's release will not be incompatible with the welfare of society or detrimental to his own good, the board may issue to the child an absolute release."

That these two criteria are not necessarily closely related is well expressed by the Director of Child Training Schools of the State of Florida.

> "The trouble they cause is not a safe guide to what causes the trouble. To most people the youngster who gets mixed up in a gang fight which ends in someone's getting badly hurt, or culminates in a wanton orgy or destruction is a more serious case than the boy who is found hoarding pencils stolen from his little sister and burying them at regular intervals under his favorite tree. Also it is quite understandable that the profusely repentant sinner or the politely grateful receiver of just punishment would be considered a good outlook as compared with the youngster who hits back when apprehended, clams up even in an interview with a friendly and well-intentioned adult, or bites the very hand extended to him in kindness. Unfortunately, these general assumptions are usually wrong. There are cases in which the 'extremeness' of an offense or its consequences was the result of unfortunate circumstances and the youngster himself was not a serious case. On the other hand our youngster with the pencil-burying ceremony may need expert help to learn how to solve life's problems in a less irrational way."[12]

As the result of recent legislation, these practical considerations are beginning to appear in the case law. The zeal of some of the exponents of appellants' position has led the legislature of at least one state, New York, to amend its juvenile court laws to provide that certain types of disposition may only be used when the acts of the child upon which jurisdiction is based fall into categories corresponding to the types of disposition.

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[12] Dozier, *When You Look at the Delinquent—What Do You See?* Somebody's Boy, August 13, 1966 (Fla. Juv. Ct. Found.), p. 4.

What appellants seek to have this Court force upon the legislature of the State of Arizona has been done voluntarily by the State of New York. So far as the troubled children of that State are concerned, the result has not been happy.

The complications resulting from restricting the Juvenile Court's powers of disposition can be examined in the litigation which begins as *Anonymous v. People*, 247 N. Y. S. 2d 323 (App. Div. 1964) and ends as *Fish v. Horn*, 14 N. Y. 2d 905, 200 N. E. 2d 857, 252 N. Y. S. 2d 313 (Ct. App. 1964). The final holding was that no matter what the welfare of the child or the protection of society might require, the court was limited in disposition by the actions of the child which were the formal basis of the court's jurisdiction.

The ultimate practical result of this statute as construed is shown most poignantly in the case of *In re Anonymous*, 43 Misc. 2d 213, 250 N. Y. S. 2d 395 (Family Court, 1964). There the girl before the court had to be released to go back to living in furnished rooms with two men, from which, perhaps, the probation department would be able to drag her to the clinic for treatment of her syphilis. She could not be committed to the only institution which offered a chance of helping her because her actions did not, under the statute, authorize commitment to that institution.

The inevitable result of accepting appellants' argument that the Juvenile Court statutes deny due process unless the court's discretion in disposition is limited by reference to the actions of the child is a multiplication of cases in which the child must be denied the treatment which offers the greatest prospect of rehabilitation. To condemn even one child to the horrors of tertiary syphilis places a staggering burden upon the conscience. Appel-

lants seem willing to accept this burden. We contend that this Court should not.

III. Mere Procedural Errors in the Trial of a Case Should Not Be the Basis For a Holding That Due Process Was Denied.

Our final contention is that even if the record of the proceedings in the Juvenile Court be examined in the light most favorable to the appellants, instead of following the rule that all presumptions are in favor of the regularity of proceedings in the courts below, the most that can be said is that the trial court committed procedural errors.

From a strict legal standpoint, on the record which is before this Court, it is impossible to see the whole picture of the situation of the appellants and their son as the trial judge must have seen it, although some hints appear in the transcript. (R. 58.)

The appellants in their arguments make it appear as if the child's commitment to the industrial school was shockingly arbitrary. It is always easy to second-guess the hard-pressed juvenile court judge. We do suggest that the type of offense the boy committed; the fact that he had been under probation supervision for several months; and the absence of both his parents from home a substantial portion of the time, all indicate that a period of time in a controlled environment was very probably required, both for the welfare of the child and the protection of the public.

Even if it be granted, arguendo, that the disposition was disproportionate to the seriousness of the acts complained of, the court and probation department were faced with the much more serious problem of determining whether Gerald's actions did not demonstrate rather con-

clusively that probation was ineffectual, as a means of treating his difficulties, requiring that some other approach be adopted. This Court has held that probation comes as an act of grace, and there is no constitutional right to notice and hearing before revocation. *Escoe v. Zerbst*, 295 U. S. 490, 492 (1935).

> "The only evidentiary requisite necessary for the revocation of probation should be an informed recognition that its objectives are not being fulfilled either through manifestations of the individual or as a likely consequence of environmental influences." [13]

Upon this point, the record here is crystal clear, however muddy it may seem to be in other respects. Both Gerald's actions and the environmental influences establish beyond question that the objectives of his probation were not being fulfilled.

If, however, we are wrong about this, then the most that can be said is that the errors complained of here are not the fault of the law, but of the trial court judge. It seems illogical to wipe out or revise the statutes because of an occasional error in a vast volume of litigation.

This problem has been considered by the courts in the past. In *Mill v. Brown*, 31 Utah 473, 486, 88 Pac. 609, 615 (1907), a case relied upon by appellants in the court below,[14] the court says:

> "From an inspection of the record in this case, meagre as it is, we are forced to the conclusion that the difficulties are due far more to the respondent [the Juvenile Judge] than to the law."

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[13] Kean, *Due Process Applied to Hearings for the Revocation of Juvenile Probation*, 16 Juvenile Court Judges J. 178, 182 (1966).

[14] Appellants' Opening Brief, pp. 14, 20.

In the case of *Ex Parte Januszewski*, 196 Fed. 123, 131 (C. C. S. D. Ohio 1911), the court says:

> "That the law, when administered by courts wanting in wisdom and wide judicial discretion, may sometimes be wrongfully applied and thereby work injustice to the accused, is not sufficient to vitiate it."

The most that can be said in this case is that the trial court judge abused his discretion, or wrongfully applied the law of Arizona. However, it would be a grave disservice to law, to justice, and to children if this Court were to vitiate the law because of the trial court's alleged errors.

CONCLUSION.

Because children are not adults, their problems require treatment different from that afforded adults. Informality in procedure and flexibility of disposition are essential to the concept of individualized justice. Departure from the civil and equitable character of juvenile court actions by blanket application of constitutional guarantees designed to protect adult defendants in criminal proceedings would vitiate our juvenile court laws.

For these reasons and those expressed so ably by the Arizona Supreme Court, it is respectfully submitted that appellants were not denied due process of law and therefore the judgment of the Supreme Court of Arizona should be affirmed.

Respectfully submitted,

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